

HOUSE BILL REPORT

ESHB 2126

As Passed Legislature

Title: An act relating to providing accommodations to dependent persons who are victims and witnesses.

Brief Description: Providing accommodations to dependent persons who are victims and witnesses.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Kenney, Kessler, Rodne, Linville, Hankins, Grant, Takko, Newhouse, Williams, Flannigan, Sells, Ormsby, Chase and Serben).

Brief History:

Committee Activity:

Judiciary: 3/1/05, 3/2/05 [DPS].

Floor Activity:

Passed House: 3/11/05, 93-0.

Senate Amended.

Passed Senate: 4/12/05, 45-0.

House Concurred.

Passed House: 4/19/05, 96-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Creates certain rights for dependent persons who are victims and witnesses of crimes.
- Allows for videotape depositions of dependent persons.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Definitions of Dependent Persons and Vulnerable Adults

There are various statutes making it a crime to mistreat a dependent person. A "dependent person" is defined in the criminal mistreatment laws as a person who, because of physical or mental disability or because of extreme advanced age, is dependent upon another for the basic necessities of life. The basic necessities of life means food, water, shelter, clothing, and medically necessary health care. A vulnerable adult, resident of a nursing home, or resident of an adult family home is presumed to be a dependent person. A person is a "vulnerable adult" if the person: (a) is 60 years old or older who has the functional, mental, or physical inability to care for him or herself; (b) is found incapacitated under the guardianship laws; (c) has a developmental disability; (d) is admitted to any residential care facility that is required to be licensed by the state; or (e) is receiving services from home health, hospice, or home care agencies or an individual provider.

Rights of Victims and Witnesses

In 1981, the Legislature enacted statutes establishing certain rights for victims and witnesses of crimes. Those rights generally address issues around keeping the victim informed and making it easier for the victim to participate in court proceedings. In 1985, the Legislature enacted similar statutes establishing rights for child victims and witnesses. Among the rights specifically for child victims and witnesses are provisions for advocates to be present in court and during interviews with the child and a provision to prohibit disclosure of certain identifying information of child victims.

The failure to provide notice of these rights does not result in civil liability as long as the failure to notify was in good faith and without gross negligence. The rights enumerated are not to be construed as creating substantive rights and duties, and in an individual case, the rights are subject to the discretion of the law enforcement agency, prosecutor, or judge.

Depositions

Court rules, statutes, and case law allow the taking of a witness's deposition in criminal trials. Under the court rule, upon a showing that the witness may be unable to attend a hearing or refuses to discuss the case with counsel, the court may allow a deposition if the witness's testimony is material and necessary to prevent a failure of justice. The party taking the deposition must notify the other party in writing of the time and place, and the party receiving notice may ask the court to adjust the time and place. A deposition may not be used against a defendant who has not had notice of and an opportunity to participate in or be present at the deposition. The deposition may be used by any party to contradict or impeach the testimony of the witness who was deposed. Court rules and case law allow depositions to be recorded by video tape.

Summary of Engrossed Substitute Bill:

A new chapter is created to provide rights to dependent persons who are victims and witnesses of crimes and allow for videotape depositions of dependent persons.

The definition of a dependent person is the same as that term as used in the criminal mistreatment laws, and it includes the presumption that a vulnerable adult, resident of a nursing home, or resident of an adult family home is a dependent person.

Rights of Victims and Witnesses Who Are Dependent Persons

A list of rights are enumerated for dependent persons who are victims or witnesses of crimes. The rights are the same as those listed for victims and witnesses and child victims and witnesses, except there is no provision regarding the victim's identifying information. The rights listed are not to be construed as creating substantive rights and duties, and each case is subject to the discretion of law enforcement, the prosecutor, or the judge.

Depositions

Prior to the commencement of the trial, the court may allow the prosecutor or defense to take a videotape deposition of the dependent person if it is likely that the person will be unavailable to testify at trial. The court's finding of likely unavailability must be based upon, at a minimum, recommendations from the person's doctor or anybody else with direct contact with the dependent person and based on the dependent person's specific behavior. The party seeking the deposition must provide reasonable written notice to the other party, who shall have the opportunity to be present and cross-exam the dependent person. The deposition may be used at trial if the dependent person is unavailable and the other party had notice of and an opportunity to be present at the deposition.

Liability

Failure to provide notice of the rights or to assure these rights to the dependent person shall not result in civil liability if the failure was in good faith.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) It is important that all persons have access to the justice system and are able to fully participate in the process. This bill is an attempt to better balance the legal proceedings involving dependent persons. Not everyone who appears in court is on equal footing. Making these accommodations for a dependent person will ensure that justice is served. The bill will help stop the serial victimization of elderly folks. Many people with mental disabilities are sexually assaulted and simply expect to be abused and exploited because these cases are so difficult to prosecute. This bill will help to prosecute these crimes.

(With concerns) It's unclear what the fiscal impact will be because many of the provisions in the bill are at the court's discretion. Very few courts have closed-circuit television equipment.

Testimony Against: If the prosecutor is allowed to ask for a deposition, the defense should also be allowed to ask for one. The court already has authority under court rules to do what is

listed in section 4. The Legislature should set out a general policy and leave it to the court to adopt rules to implement that policy in court proceedings. The bill does not address what happens when a dependent person has a guardian. The bill would deny the disclosure of the dependent person's identifying information in a court proceeding, but that information would need to be disclosed to the defendant.

Persons Testifying: (In support) Representative Lantz, prime sponsor; and Seth Dawson and Phil Jordan, Washington Protection and Advocacy System.

(With concerns) Sophia Byrd, Association of Counties; Martha Harden Cesar, Superior Court Judges' Association; and Jeff Hall, Board for Judicial Administration.

(Opposed) Michael Hanby, Washington Defenders' Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.